SIGMA CABLE CO. LTD. v. NAM HUAT ELECTRIC & SANITARY CO. & ORS.

[O.C.J. (Choor Singh J.) November 4, 1971]

[Singapore — Suit No. 435 of 1967]

Contract — Construction — Agreement by letter — Surety undertaking to make payments in respect of goods supplied — Outstanding balance for goods previously supplied — Extent of liability of surety.

Evidence — Admissibility — Agreement in writing — Allegation of informal contract — Whether oral evidence admissible — Evidence Act (Cap. 5, 1970 Ed.) s. 92(b).

The plaintiff's claim against the first defendant was as principal, and against the second defendant as surety for a total sum of $22,805.79, being the price of electrical goods sold and delivered by the plaintiff to the first defendant.

On August 17, 1966, the first defendant was indebted to the plaintiff in the sum of $13,780.72, for electrical goods sold and delivered. On the same day, the second defendant wrote a letter to the plaintiff in which it agreed that, if the plaintiff would forebear from suing the first defendant for the said debt and carried on supplying the first defendant with electrical goods and materials on credit, it would be responsible to the plaintiff for the payment due. The plaintiff accordingly did not sue and further supplied the first defendant with the said goods. Therefore, the amount claimed was made up of two sums, *i.e.* $13,780.72 for goods supplied before the letter was written, and $9,024.57 for goods supplied thereafter.

The first defendant did not enter appearance and judgment was entered against them in the sum of $22,805.79. The second defendant denied that the sum claimed or any other sum was due by them to the plaintiff. They guaranteed payment for goods supplied after they wrote the letter, *i.e.* $9,024.57, and as it had already been paid to the plaintiff after issue of the writ, there was nothing due by them to the plaintiff.

Plaintiff's counsel submitted that this was an extremely informal contract; that the terms were not fully set out in the letter of August 17, 1966; that proviso (b) to section 92 of the Evidence Act was therefore applicable; and that the contract being partly oral and partly in writing, oral evidence was admissible to prove the oral part of the agreement.

Held: (1) proviso (b) to section 92 of the Evidence Act applies only when there is a separate contemporaneous oral agreement as to a matter on which a document is silent. As the plaintiff had relied entirely on the letter of August 17, 1966, and had not pleaded any separate oral agreement, it was not entitled to tender oral evidence to prove that there was a separate oral agreement under which the second defendant were liable for payment of the plaintiff's claim for $13,780.72;

(2) therefore, since the letter of August 17, 1966 did not support the plaintiff's claim for the balance of $13,780.72, the claim against the second defendant for the said sum failed.

Obiter: even if the second defendant had orally undertaken to be responsible for the payment of $13,780.72, due to the plaintiff, the said undertaking was unenforceable by reason of the Statute of Frauds which requires such an undertaking to be evidenced by some memorandum or note, in writing, signed by the second defendant, because the undertaking was a promise to answer for the debt of another.

SUIT.

Chan Chow Wang for the plaintiff.

J. C. Chen for the second defendant.

Choor Singh J.: In this suit the plaintiff's claim against the first defendant was as principal and against the second defendant as surety for $22,805.79 being the price of electrical goods sold and delivered by the plaintiff to the first defendant.

In its statement of claim the plaintiff pleaded the following facts:—

"1. On the 17th day of August, 1966 the first defendant was indebted to the plaintiff in the sum of $13,780.72 for electrical goods sold and delivered by the plaintiff to the first defendant.

2. On that day, the second defendant wrote a letter to the plaintiff in which it agreed that, if the plaintiff would forebear from suing the first defendant for the said debt and supply the first defendant with electrical goods and materials on credit it would be responsible to the plaintiff for the payment due to the plaintiff.

3. The plaintiff accordingly forebore to sue the first defendant and supply them with the said goods and the total sum due and owing amounted to $22,805.79.

4. Neither the first defendant nor the second defendant has paid the plaintiff the said sum of $22,805.79 or any part thereof."

The first defendant did not enter appearance and judgment was entered against them in the sum of $22,805.79.

The second defendant in its statement of defence denied that the sum claimed or any other sum was due by the second defendant to the plaintiff.

The letter containing the agreement on which the plaintiff relied reads as follows:—

"

17th August, 1966.

Messrs. Sigma Cable Co., Ltd.,
683 Havelock Road,
Singapore, 3.

Dear Sirs,

Supply of materials to Messrs. Nam Huat Electric & Sanitary Co. of 353 Jalan Besar, Singapore for electrical installation to 2 blocks of 12-storey 2-room flats (478 units) and 1 block of 10-storey 2/3 room flats, 90 3-room, 30 2-room. Total 598 units at Toa Payoh — Neighbourhood II — Contract IV

With reference to our telephone conversation with your Mr. Andrew Chang, we confirm our undertaking of your supplying goods and materials to the abovementioned contractor on credit for which we shall be responsible for the payment due to you.

Yours sincerely,
Sd. C.C. Lew,
Branch Manager,
Malayan Insurance Co., Inc.,
Singapore.

The amount claimed was made up of two sums *i.e.* $13,780.72 for goods supplied to the first defendant before the abovementioned letter was written and $9,024.57 for goods supplied after the said letter was written. The second defendant's case was that it guaranteed payment for goods supplied after it wrote the abovementioned letter and as the amount due in respect of such goods *i.e.* $9,024.57 had already been paid to the plaintiff after the issue of the writ, there was nothing due by it to the plaintiff. The plaintiff maintained that the second defendant was also liable for payment of $13,780.72 being the amount due in respect of goods supplied before the second defendant's letter of 17th August 1966.

It will be seen that the letter of 17th August 1966 does not contain any undertaking to pay the amount already then due and payable by the first defendant to the plaintiff. Nor does it contain a request to the

plaintiff to forebear from suing the first defendant for the said amount already due.

Counsel for the plaintiff submitted that the agreement between the plaintiff and the second defendant was partly in writing and partly oral and that the plaintiff was entitled to give evidence of the oral part of the agreement. Counsel stated that he relied on proviso (b) of section 92 of the Evidence Act which reads as follows:—

"92. When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to section 91, no evidence of any oral agreement or statement shall be admitted as between the parties to any such instrument or their representatives in interest for the purpose of contradicting, varying, adding to, or subtracting from its terms:

Provided that —

(a) xxx xxx xxx

(b) the existence of any separate oral agreement, as to any matter on which a document is silent and which is not inconsistent with its terms, may be proved; in considering whether or not this proviso applies, the court shall have regard to the degree of formality of the document;"

Counsel for the plaintiff submitted that this was an extremely informal contract; that the terms were not fully set out in the letter of 17th August 1966; that proviso (b) to section 92 was therefore applicable; and that the contract being partly oral and partly in writing, oral evidence was admissible to prove the oral part of the agreement.

Counsel for the second defendant objected to the admission of oral evidence to vary the terms of the contract as set out in the letter of 17th August 1966. Counsel submitted that proviso (b) to section 92 was not applicable as there was no allegation of a separate oral agreement; that the plaintiff had not so pleaded; and that the plaintiff in his statement of claim relied entirely on the letter of 17th August 1966. Counsel contended that this was an agreement to answer for the debt of another person; that it was required to be in writing and that the letter of 17th August 1966 was the required document under the Statute of Frauds. Counsel submitted that there was nothing on the face of the said letter which required the court to look beyond it to determine the terms of the agreement and that this was not a case where extrinsic evidence could be allowed to go in. Counsel stated that the Evidence Act governed the admission of evidence and it must be strictly complied with.

In my opinion proviso (b) to section 92 of the Evidence Act applies only when there is a separate contemporaneous oral agreement as to a matter on which a document is silent. Proof of it may be given when such oral agreement is not inconsistent with or does not contradict the terms of the document. According to their statement of claim, it was not the plaintiff's case that there was a separate contemporaneous oral agreement. The plaintiff's case, as pleaded, was that "on that day (17th August 1966) the second defendant wrote a letter to the plaintiff in which it agreed that, if the plaintiff would forebear from suing the first defendant for the said debt and supply the first defendant with electrical goods and materials on credit it would be responsible to the plaintiff for the payment due to the plaintiff."

It will be seen that the plaintiff had relied entirely on the letter of 17th August 1966 and had not pleaded any separate oral agreement. In the circumstances the plaintiff was not entitled to tender oral evidence to prove that there was a separate oral agreement under which the second defendant was liable for payment of the plaintiff's claim for $13,780.72.

Furthermore, even if the second defendant had on the 17th August 1966 orally undertaken that in the event of the first defendant failing to pay the plaintiff the sum of $13,780.72 then due to the plaintiff, the second defendant would be responsible for the payment of the said sum, the said undertaking was unenforceable by reason of the Statute of Frauds which required such an undertaking to be evidenced by some memorandum or note thereof in writing signed by the second defendant because the undertaking was a promise to answer for the debt of another.

The plaintiff's total claim was for $22,805.79. The plaintiff had since the issue of the writ received payment of $9,024.57 being the amount due to it in respect of goods supplied to the first defendant after the second defendant's letter of the 17th August 1966. The said letter clearly did not support the plaintiff's claim for the balance of $13,780.72. As the plaintiff had no other documentary evidence and was not entitled to give oral evidence to prove that the second defendant was liable for the said sum of $13,780.72, the claim failed and was accordingly dismissed with costs.

Judgment for the second defendants.

Solicitors: *Chan Chow Wang & Co.; Laycock & Ong.*

X SHIPPING ENTERPRISES LIMITED OF HONGKONG v. THE COMPTROLLER OF INCOME TAX, SINGAPORE

[O.C.J. (Choor Singh J.) November 25, 1971]

[Singapore — District Court Appeal No. 13 of 1970]

Income Tax — Non-resident company — Charter business by — Tax on freight income — Casual sailings — Meaning of — Cessation of business — Proof of — Income Tax Ordinance (Cap. 166), s. 27 — Scope of — s. 35(5) — When applicable — s. 35(3)(d) — Failure to give required notice — Whether Comptroller has discretion to receive notice out of time — Whether court has such discretionary power.

The appellants, a company incorporated under the laws of Hong Kong, commenced the business of a charterer in Singapore in November 1964. It was not in dispute that there were six continuous sailings up to August 1965 and two further sailings on February 4, 1967 and May 3, 1968. In November 1967 the Comptroller of Income Tax came to know of the business activities of the appellants. On August 14, 1968 the comptroller raised assessments for the years of assessment 1964, 1965 and 1966 on the freight income received by the appellants during the period extending from November 1964 to August 1965 for the years ending December 31, 1964, December 31, 1965 and December 31, 1966. The income of the appellants was ascertained in accordance